

APPEAL NO. 041891  
FILED SEPTEMBER 22, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 25, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first quarter, January 16 through April 15, 2004, and that the claimant was not entitled to SIBs for the second quarter, April 16 through July 15, 2004. The claimant appealed, disputing the determinations of nonentitlement. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that on \_\_\_\_\_, the claimant sustained a compensable injury; that the claimant reached maximum medical improvement on October 10, 2002, with an impairment rating of 22%; that the claimant has not commuted any portion of his impairment income benefits; that the qualifying period for the first quarter began on October 4, 2003, and ended on January 2, 2004; and that the qualifying period for the second quarter began on January 3 and ended on April 2, 2004.

**FIRST QUARTER**

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by showing that he had a total inability to work during the qualifying period for the first quarter. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. It was undisputed that the claimant did not look for work during the qualifying period for the first quarter.

The hearing officer did not err in determining that the claimant did not satisfy the good faith requirement of Rule 130.102(d)(4) by demonstrating that he had no ability to work in the relevant qualifying period. The hearing officer was not persuaded that the evidence presented by the claimant was sufficient to satisfy the requirements of Rule 130.102(d)(4). Specifically, the hearing officer determined that the claimant had some ability to work in the qualifying period and did not look for employment commensurate with his ability to work every week of the qualifying period. Nothing in our review of the

record reveals that the hearing officer's determinations in that regard are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb the hearing officer's good faith determination, or the determination that the claimant is not entitled to SIBs for the first quarter, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

## **SECOND QUARTER**

Rule 130.102(d)(5), relied on by the claimant in this case for SIBs entitlement for the second quarter, provides that the good faith requirement may be satisfied if the claimant "has provided sufficient documentation as described in subsection (e)." Rule 130.102(e) states that "an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts." The rule then lists information to be considered in determining whether the injured employee has made a good faith effort, including, among other things, the number of jobs applied for, applications which document the job search, the amount of time spent in attempting to find employment, and any job search plan.

Whether the claimant satisfied the good faith requirement for SIBs entitlement was a factual question for the hearing officer to resolve. The hearing officer noted that the claimant looked for work outside his restrictions and that 4 of his 14 job contacts were by telephone. The hearing officer concluded that the claimant did not satisfy the good faith requirement for SIBs entitlement for the second quarter. Nothing in our review of the record indicates that the hearing officer's SIBs determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION for Petrosurance Casualty Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR  
9120 BURNET ROAD  
AUSTIN, TEXAS 78758.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Edward Vilano  
Appeals Judge